Filed 6/8/17 In re J.M. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.M., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B279037 (Super. Ct. No. 2014038865) (Ventura County)
THE PEOPLE, Plaintiff and Respondent, v. J.M., Defendant and Appellant.	

J.M. appeals an order denying his motion to seal his juvenile record (Welf. & Inst. Code, § 786)[1] after the juvenile court dismissed a delinquency petition (§ 601) for possession of 28.5 grams or less of marijuana at school (Health & Saf. Code,

[1] All statutory references are to the Welfare & Institutions Code unless otherwise stated.

§ 11357, subd. (e)). Appellant contends that he successfully completed informal supervision and that section 786 requires that his juvenile record be sealed. We affirm.

Procedural History

In 2015, a juvenile petition was filed alleging that appellant possessed 28.5 grams or less of marijuana at school. (Health & Saf. Code, § 11357, subd. (e.) When appellant appeared for arraignment, his trial attorney said it was a "[s]pecial case" and that appellant wanted to participate in the Palmer Drug Abuse Program of Ventura County (PDAP) in lieu of formal court proceedings. The trial court continued the arraignment and indicated that it "might dismiss" the petition if appellant completed PDAP. On June 19, 2015, appellant produced documentation that he had successfully completed PDAP. The trial court dismissed the petition with prejudice.

On September 15, 2016, appellant requested that his juvenile case record be sealed pursuant to section 786. Denying the motion, the trial court ruled that section 786 requires that the minor satisfactorily complete a court-ordered informal supervision program (§ 654.2) or probation (§ 725). The court found that "completion of PDAP is not the completion of a 'supervision program or probation' as required by Welfare and Institutions Code Section 786 for the sealing of a juvenile record."

Section 786 - Statutory Authority to Seal Juvenile Record

Interpretation of section 786 presents a question of law subject to independent review on appeal. (See *In re Clarissa H.* (2003) 105 Cal.App.4th 120, 125.) "We examine the statutory language and give it a plain and commonsense meaning. [Citation.]" (*People v. Moreno* (2014) 231 Cal.App.4th 934, 939.)

"If the statutory language is unambiguous, then the plain meaning controls. [Citation.]" (*Ibid.*)

Section 786 provides: "If a person who has been alleged or found to be a ward of the juvenile court satisfactorily completes (1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense, the court shall order the petition dismissed. The court shall order sealed all records pertaining to the dismissed petition in the custody of juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice." (*Ibid.*)

The first condition triggering section 786 eligibility is the satisfactory completion of an informal supervision program under section 654.2 after the delinquency petition is filed.[2] (See *In re Adam R.* (1997) 57 Cal.App.4th 348, 351-352.) Rather than proceed on the petition, the trial court may place the minor in a six-month program that is supervised by the probation department and that includes substance abuse treatment,

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[2] Section 654 concerns prepetition programs of supervision in which the probation officer delineates a specific program of supervision, not to exceed six months. Section 654.2, in contrast, provides for informal supervision *after* a petition has been filed (i.e., post-petition). (See *In re Anthony B.* (2002) 104 Cal.App.4th 677, 680-681.) Appellant argues, without authority, that PDAP is a section 654 program because appellant was not arraigned. Once the petition was filed, appellant became subject to 654.2.

In *In re G.F.* (May 30, 2017, B276109) __ Cal.App.5th __ [2017 Cal.App. Lexis 482], we held that the prosecution could not, by dismissing the petition before arraignment, claim the program of supervision is governed by section 654 and deprive the minor of his section 786 right to have his records sealed after the program was successfully completed.

counseling, education, and community service. (§§ 654, 654.4, 654.6.) Section 654.2, subdivision (a) provides the trial court "may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of supervision as set forth in Section 654."

Here, the PDAP program and continuance was less than six months, which supports the finding that appellant's case did not involve an informal program of supervision within the meaning of section 654.2 and 654. Section 654 requires that "[t]he program of supervision shall require the parents or guardians of the minor to participate with the minor in counseling or education programs, including, but not limited to, parent education and parenting programs . . . ." There is no evidence that appellant's parents participated in the PDAP program.

Appellant's reliance upon *In re C.Z.* (2013) 221 Cal.App.4th 1497 is misplaced. *In re C.Z.* states that informal supervision under sections 654 and 654.2 may qualify as probation for purposes of deferred entry of judgment. After a dependency petition is filed, the juvenile court has the option of placing the minor on "'a program of supervision as set forth in Section 654' for six to 12 months. (Welf. & Inst. Code, § 654.2, subd. (a).) This requires the consent of both the minor and the minor's parent or guardian." (*Id.* at p. 1502.) "If the minor does not perform successfully, 'proceedings on the petition shall proceed . . . .'" (*Id.* at pp. 1502-1503.) "If the minor successfully completes the program of supervision, the petition is dismissed. . . . This procedure is commonly called either

'informal probation' or 'informal supervision.' [Citation.] [¶] Deferred entry of judgment is an 'alternative' to informal supervision. [Citation.] The deferred entry of judgment procedure is laid out in Welfare and Institutions Code section 790 et seq. To be eligible for deferred entry of judgment, the minor must be alleged to have committed a felony. (Welf. & Inst. Code, § 790, subd. (a).)" (*Id.* at p. 1503.) Appellant was not charged with a felony or placed on informal probation.

Section 786 provides, in the alternative, that the juvenile records shall be sealed if the minor satisfactorily completes probation pursuant to section 725. Probation is a disposition option that cannot be ordered until after the trial court proceeds on the petition and makes a jurisdictional finding. Here, the case did not progress beyond arraignment, no jurisdictional findings were made, and appellant was not placed on probation.

As an alternative, section 786 provides for mandatory dismissal and the sealing of juvenile records where the minor satisfactorily completes "a term of probation" for any offense that is not a serious or violent felony listed in section 707, subdivision (b).) (§786, subd. (a); see § 727.) The trial court did not place appellant on probation, or designate PDAP as a term of probation, or find that appellant successfully completed a term of probation when it dismissed the petition.

Appellant argues that "term of probation," as set forth in section 786, is a catchall phrase that includes any form of informal supervision that does not qualify under section 654.2. We are precluded from rewriting or adding to section 786. Appellant requested PDAP and was granted a four month continuance to complete the program. The trial court did not say

that the juvenile record would be sealed if appellant successfully completed PDAP.

Appellant argues that the rule of lenity supports a broad interpretation of section 786 and that PDAP should be treated as a section 654.2 informal supervision. "'The rule [of lenity] applies only if the court can do no more than guess what the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule.' [Citation.]" (*People v. Avery* (2002) 27 Cal.4th 49, 58.) Section 786 states in plain and unambiguous language that it is limited to the successful completion of: (1) informal supervision under section 654.2; (2) or probation without wardship under section 725; or (3) probation with wardship. Pursuant to section 786, the informal supervision program must be ordered and overseen by the juvenile court. That did not happen here. (See, e.g., *In re Armondo A.* (1992) 3 Cal.App.4th 1185, 1189 [section 654.2 "creates a new power in the court to grant informal probation supervision in a postpetition setting independently of the probation officer's prepetition discretion [under section 654."]

The trial court correctly found that section 786 does not require that appellant's juvenile record to be sealed. Nor is section 786 intended "to be a panacea for all sealing issues." (*In re Y.A.* (2016) 246 Cal.App.4th 523, 527.) Appellant is not without a remedy. After appellant turns 18 years old in 2019, he can petition the juvenile court to seal his juvenile records. (§ 781, subd. (a)(1)(A).)

Disposition

The judgment (order denying motion to seal juvenile records pursuant to section 786) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

William R. Redmond, Commissioner

Superior Court County of Ventura

Stephen P. Lipson, Public Defender, Michael C. McMahon, Chief Deputy, William Quest, Snr. Dep. Public Defender, for Defendant and Appellant.

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